In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 970

CARMELITA TEVES CARRIAGA, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner, a native of the Philippines, lawfully entered the United States as an exchange visitor under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 535) in June 1962. She was an intern in the United States until July 1964, when she travelled to Australia for further training. In November 1964, she returned to the Philippines. In May 1965, she entered the United States as a nonimmigrant visitor for pleasure and has since remained in this country (R. 23-26, 29).

On August 13, 1965, petitioner was served with an order to show cause charging her with being deportable in that she remained in the United States for a longer time than permitted by law (R. 24). At hearings before the Special Inquiry Officer, petitioner admitted all of the factual allegations in the order to show cause, including the fact that she was presently deportable (R. 15), but applied for adjustment of status under the provisions of Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) (R. 16).[1] On October 20, 1965, the Special Inquiry Officer denied petitioner's application for adjustment on the ground that petitioner did not satisfy the statutory requirement that she be "eligible to receive an immigrant visa and * * * admissible to the United States for permanent residence" (note 1, *supra;* R. 21). Petitioner, he found, was ineligible under Section 212(e) of the Act, 8 U.S.C. 1182(e), which provides that any person who was admitted to the United States as a "bona fide student, scholar, trainee * * * coming temporarily to the United States as a participant in a program designated by the Secre-

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[1] Section 245 provides, in pertinent part:

(a) The status of an alien, other than an alien crewman, who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is approved.

tary of State, for the purpose of teaching * * * or receiving training * * *" is ineligible for an immigrant visa "until it is established that such person has resided and been physically present in the country of his nationality or his last residence, or in another foreign country for an aggregate of at least two years following departure from the United States." The officer held that the ineligibility was applicable even though the Philippine government had released petitioner from her exchange-visitor commitment (R. 21, 35). On December 30, 1965, the Board of Immigration Appeals sustained the decision of the Special Inquiry Officer (R. 1-3). On petition for review, the court of appeals affirmed (Pet. App. A).

Petitioner contends that Congress did not intend to apply the restrictive provisions of Section 212(e) when the country from which the exchange student has entered has executed a release from any commitments to that country. Congress, however, provided no such exception in the statute. The legislative history of the Mutual Educational and Cultural Exchange Act of 1961 and its predecessor (which placed a similar restraint on exchange students entering the United States under the provisions of the United States Information and Educational Exchange Act of 1948 (62 Stat. 6)), shows that the purpose of the restriction was to promote a policy whereby "those individuals who are brought to the United States will return either to their own or another cooperating country to impart to their friends and the society in which they live impressions of the United States and its culture." S. Rep. No. 1608, 84th Cong., 2d Sess.,

p. 2, 1956 U.S. Code Cong. and Adm. News 2662-2663; see also remarks of Rep. Walter, 105 Cong. Rec. 1952-1953; Gordon and Rosenfield, *Immigration Law and Procedure* (1959), Section 6.8g, pp. 650-652. That policy is not furthered by admitting one who, like petitioner, has not resided abroad for two years. Section 212(e), in unequivocal terms, renders petitioner ineligible for a visa since she failed to reside in another cooperating foreign country for an aggregate period of at least two years after departure from the United States. Hence the discretionary remedy authorized by Section 245 is unavailable.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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